



Informal Hearing Determination

Company: Airway Resources, LLC **Permit No.:** 1301742
Subject: Notice of Violation LJJ0001189
Conference: September 12, 2014 @ 8:30 AM **Location:** BSG Office
Participants: Leslie Vincent, PE

On September 12, 2014, an informal hearing was held at the Big Stone Gap office of the Department of Mines Minerals and Energy (Room 116), in reference to the fact of violation for Notice of Violation LJJ0001189. Representing A & G Coal Corporation was Mr. Leslie Vincent, PE. The hearings officer was Harve Mooney. Mr. Vincent was afforded the opportunity to provide comments and/or information during the informal hearing. There were no attendees from the general public at this hearing.

Summary of Informal Hearing

Notice of Violation LJJ0001189 was issued to the operator on July 7, 2014 for failure to meet the water monitoring requirements for the 1st quarter of 2014. The violation was a non remedial violation. Mr. Vincent noted that data had been submitted for this permit. He stated that the delinquent report had been run twice. He stated he was unsure as to when the violation was written. It may have been issued after the first report was written. Mr. Vincent noted that the data was submitted in July, 2014.

Informal Hearing Recommendation

Notice of Violation LJJ0001189 was issued to the operator on July 7, 2014 for failure to meet the water monitoring requirements for the 1st quarter of 2014. The standard for this violation is addressed within the Virginia Coal Surface Mining Reclamation Regulations, which addresses water monitoring and the submission of the analysis. Specifically, **Section 4VAC-25-130-816 .41 of the Virginia Coal Surface Mining Reclamation Regulations** governs the submittal of water monitoring to the DMLR. Specifically, subsections “c” and “e” of this section note,

(c) Ground-water monitoring.

(1) Ground-water monitoring shall be conducted according to the ground-water monitoring plan approved under 4VAC25-130-780.21(i). The division may require additional monitoring when necessary.

(5) Ground-water monitoring data shall be submitted within 30 days after the end of the calendar quarter to the division. More frequent reporting may be prescribed by the division. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any ground-water sample indicates noncompliance with the permit conditions, then the permittee shall promptly notify the division and immediately take the actions provided for in 4VAC25-130-773.17(e) and 4VAC25-130-780.21(h).

(6) Ground-water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with the procedures of 4VAC25-130-774.13, the division may modify the monitoring requirements, including the parameters covered and the sampling frequency, if the permittee demonstrates, using the monitoring data obtained under this Paragraph, that--

(i) The operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; and the water rights of other users have been protected or replaced; or

(ii) Monitoring is no longer necessary to achieve the purposes set.

(e) Surface-water monitoring.

(1) Surface water monitoring shall be conducted according to the surface-water monitoring plan approved under 4VAC25-130-780.21(j). The division may require additional monitoring when necessary.

(2) Surface-water monitoring data shall be submitted every three months to the division or more frequently as prescribed by the division. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any surface-water sample indicates noncompliance with the permit conditions, the permittee shall promptly notify the division and immediately take the actions provided for in 4VAC25-130-773.17(e) and 4VAC25-130-780.21(h). Reporting shall be in accordance with the National Pollutant Discharge Elimination System (NPDES) permit requirements.

(3) Surface-water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with 4VAC25-130-774.13, the division may modify the monitoring requirements in accordance with the NPDES permit, including the parameters covered and sampling frequency, if the permittee demonstrates, using the monitoring data obtained under this Paragraph, that--

(i) The operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; and the water rights of other users have been protected or replaced; or

(ii) Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under 4VAC25-130-780.21(j).

The company did not offer sufficient evidence that the water sampling was timely submitted to the DMLR to support its position. Indeed, operator failed to submit the reports prior to the deadline of April 30, 2014. Records indicate the reports were not submitted until August 4, 2014. Based on the findings of this hearing, it is this hearings officer opinion that this violation was properly issued, and it is recommended that the violation be affirmed.

Informal Hearings Officer: Harve A Mooney

Date: 09/19/14